

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

OFFICE OF  
MANAGING DIRECTOR

AUG 20 1993

Dan J. Alpert, Esq.  
1250 Connecticut Avenue, N.W.  
7th Floor  
Washington, D.C. 20036-2603

93-26

Dear Mr. Alpert:

This will respond to your request for refund of the hearing fee filed on behalf of Spectrum Broadcasting Co. ("Spectrum") in connection with its construction permit application for a new FM station at Bowdon, Georgia.

You state that Spectrum did not file a notice of appearance and that consequently its application was dismissed. Whereas failure to file a notice of appearance is grounds for dismissal, Spectrum's application was dismissed pursuant to an approved settlement agreement. See Memorandum Opinion and Order, FCC 93M-141 (April 5, 1993). However, under the circumstances, since Spectrum did fail to file a notice of appearance, refund of the hearing fee is appropriate. See 47 C.F.R. § 1.1111(b)(2).

Accordingly, your request is granted. A check, made payable to the maker of the original check and drawn in the amount of \$6,760.00, will be sent to you at the earliest practicable time. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 632-0241.

Sincerely,

*Marilyn J. McDermett*

Marilyn J. McDermett  
Associate Managing Director  
for Operations

Holly

Not 4/6/93  
- record in fee system

RECEIVED

APR - 5 1993

The Law Office of  
**Dan J. Alpert**

1250 Connecticut Ave., N.W.  
7th Floor  
Washington, D.C. 20036-2603

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY  
(202) 637-6662 (FAX)

(202) 637-9158

April 5, 1993

Andrew S. Fishel  
Managing Director  
Federal Communications Commission  
1919 M Street, NW  
Room 852  
Washington, DC 20554

9205158170364002  
Bad Check  
5/29/93

Re: File No. BPH-911031MC  
MM Docket No. 93-26  
Bowdon, Georgia

Dear Mr. Fishel:

**Spectrum Broadcasting Co.** ("Spectrum"), by its attorney, hereby **requests refund of its \$6760 Hearing Fee** paid in conjunction with the above-referenced application. With respect thereto, the following is stated:

Spectrum timely paid its \$6760 Hearing Fee. The proceeding was designated for hearing by Hearing Designation Order, DA-93-122 (Feb. 24, 1993), and notices of appearance in the proceeding were due on March 16, 1993. As noted in the attached Memorandum Opinion and Order, FCC 93M-141 (April 5, 1993), Spectrum did not file a Notice of Appearance (id. at n.2), and by that MO&O issued on April 1, 1993, Spectrum's application was dismissed. See Attachment 1.

Consequently, Spectrum is entitled to a refund of its \$6760 Hearing Fee pursuant to Section 1.1111(b)(2) of the Commission's Rules.

WHEREFORE, it is respectfully requested that Spectrum Broadcasting Co. be granted a refund of its Hearing Fee, as permitted under the Commission's rules.

Respectfully submitted

SPECTRUM BROADCASTING CO.

By:

Dan J. Alpert

ATTACHMENT 1

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC 93M-141

|                                      |   |                       |
|--------------------------------------|---|-----------------------|
| In re Applications of                | ) | MM DOCKET NO. 93-26   |
|                                      | ) |                       |
| SPECTRUM BROADCASTING CO.            | ) | File No. BPH-911031MC |
|                                      | ) |                       |
| STEVEN L. GRADICK                    | ) | File No. BPH-911031MD |
|                                      | ) |                       |
| TERRY C. JENKS                       | ) | File No. BPH-911031MF |
|                                      | ) |                       |
| For Construction Permit for a New FM | ) |                       |
| Station on Channel 288A              | ) |                       |
| in Bowdon, Georgia                   | ) |                       |

MEMORANDUM OPINION AND ORDER

Background

Issued: April 1, 1993;

Released: April, 5, 1993

1. This is a ruling on a Joint Request For Dismissal Of Application And Approval Of Settlement Agreement ("Joint Request") that was filed on March 16, 1993, by Spectrum Broadcasting, Inc. ("Spectrum") and Terry C. Jenks ("Jenks"). Spectrum also filed on March 25, 1993, a Supplement To Joint Request For Dismissal Of Application And Approval Of Settlement Agreement ("Spectrum Supplement"). Jenks filed on March 26, 1993, its Supplement To Joint Petition And For Dismissal Of Application And Approval Of Settlement Agreement ("Jenks Supplement"). The Mass Media Bureau ("Bureau") filed Comments on March 31, 1993, and the Bureau supports the settlement. Approval of this partial settlement will reduce the number of competing applicants to two parties.

Facts

2. The Joint Request contemplates that Spectrum's application will be voluntarily dismissed with prejudice in return for a payment from Jenks not to exceed \$12,000.00. The Commission's rules permit recovery in a settlement of only the actual legitimate and prudent expenses incurred by the dismissing party. 47 C.F.R. §73.3525(a)(3) (1991). Spectrum lists its expenses in the Declaration of Tana Stalnaker, Spectrum's partner and president, that was filed with Spectrum's Supplement as follows:

|                    |         |
|--------------------|---------|
| Filing Fee         | \$2,300 |
| Engineering        | 2,850   |
| Trips to Bowden    | 702     |
| Telephone Expenses | 283     |

Attorney's Fee      2,735

TOTAL                      \$15,360

Counsel for Spectrum has filed a narrative statement in which he represents and explains his legal fees and expenses in the amount of \$2,735.00. See Amendment Of Section 73.3525, 6 F.C.C. Rcd 85, 91 n. 54 (1990). Also, there have been filed the required Declarations Of No Consideration by Jenks and Steven L. Gradick. 47 C.F.R. §73.3525(d).

3. It appears that Spectrum is willing to settle for an amount which is less than its allowable expenses. However, the Agreement also contemplates that Spectrum will apply for a refund of its hearing fee. The Jenks Supplement states that Jenks will defer payment of any portion of Spectrum's hearing fee (\$6,760) until such time as such reimbursement is denied by a final Commission order. If the Commission refunds the fee, Jenks will have paid to Spectrum only the sum of \$8,100.00, a capped amount agreed to by the parties.<sup>1</sup> If the Commission denies the refund,<sup>2</sup> Jenks will pay Spectrum the difference between \$8,100.00 and \$12,000.00 (\$3,900.00). Therefore, the parties are asking for authorization of a settlement payment from Jenks to Spectrum in an amount no greater than \$12,000.00.

#### Settlement

4. The statutory standard to be applied in accepting or rejecting a settlement proposal provides:

The Commission shall approve the agreement only if it determines that (a) the agreement is consistent with the public interest, convenience or necessity, and (b) no party to the agreement filed its application for the purpose of reaching or carrying out such agreement.

Communications Act of 1934, as amended, Section 311(c)(3). See Oak Television of Everett, Inc., et al., 93 F.C.C. 2d 926 (Review Bd. 1983).

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<sup>1</sup> The arithmetical count of Spectrum's expenses without the hearing fee computes to \$8,600.00. Apparently, the parties have agreed to waive \$500.00 to arrive at an agreed total of \$8,100.00 for the first step payoff.

<sup>2</sup> The decision on whether or not to refund Spectrum's hearing fee will be made initially by the Managing Director. 47 C.F.R. § 1.1115 (1991) (waivers or deferrals of fees to be acted upon by the Managing Director with the concurrence of the General Counsel). The designation order was released on February 24, 1993, and the parties were required to file notices of appearance within 20 days if they intend to continue to participate in the case. 47 C.F.R. §1.221(c) (to be entitled to be heard a party must file a notice of appearance within 20 days). The Joint Request was filed on March 16, 1993, although without a notice of appearance from Spectrum.

5. In this case, the Joint Request was filed in accordance with Section 73.3525. The parties have represented under penalty of perjury that their applications were not filed for the purpose of reaching or carrying out a settlement agreement and that the agreement is in the public interest. Also, the Bureau has no objection to approving the settlement. Therefore, it is determined that the parties have complied with 47 C.F.R. §§73.3525(a)(1) and (a)(2) of the Commission's rules. In addition, a review of Spectrum's line-item expenses totalling \$15,360.00 as of March 25, 1993, has been made by the Presiding Judge and those expenses are found to be legitimate and prudent in accordance with 47 C.F.R. §73.3575(a)(3) (1991).

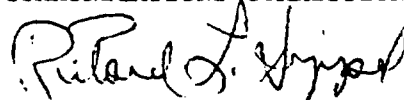
6. There has been compliance with the local publication requirement of the Commission's rules. 47 C.F.R. §73.3594(g). The parties also have paid the required hearing fees. 47 C.F.R. §1.221(g). Commission resources will be conserved by the termination of Spectrum as a party applicant in this case prior to hearing. In addition, the public interest will be served by approval of this partial settlement which will reduce the costs of litigation to the parties and to the Commission. Accordingly, it is appropriate that the proposed partial settlement between Jenks and Spectrum be accepted.

ORDER

IT IS ORDERED that the Joint Request For Dismissal Of Application And Approval Of Settlement Agreement filed on March 16, 1993, by Spectrum Broadcasting, Inc. and Terry C. Jenks, as Supplemented by the parties, IS GRANTED and the Settlement Agreement between Spectrum and Jenks IS ACCEPTED.

IT IS FURTHER ORDERED that the application of Spectrum Broadcasting, Inc. (File No. BPH-911031MC) IS DISMISSED with prejudice and the applicant's name and file number ARE TO BE STRICKEN from the case caption.

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel  
Administrative Law Judge